HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal Nos. 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718 and 719 of 2007

W.A.No. 708 of 2007

Between:

VST Industries Limited,
Rep. by its Corporate General Counsel
Mr. Sanjay Khanna

... Appellant

And

The Presiding Officer,
Labour Court-I,
Hyderabad & another

... Respondents

W.A.No. 709 of 2007

Between:

VST Industries Limited,
Rep. by its Corporate General Counsel
Mr. Sanjay Khanna

... Appellant

And

The Presiding Officer,
Labour Court-I,
Hyderabad & another

... Respondents

W.A.No. 710 of 2007

Between:

VST Industries Limited,
Rep. by its Corporate General Counsel
Mr. Sanjay Khanna

... Appellant

And

The Presiding Officer,
Labour Court-I,
Hyderabad & another

… Respondents

W.A.No. 711 of 2007

Between:

VST Industries Limited,
Rep. by its Corporate General Counsel
Mr. Sanjay Khanna

… Appellant

And

The Presiding Officer,
Labour Court-I,
Hyderabad & another

… Respondents

W.A.No. 712 of 2007

Between:

VST Industries Limited,
Rep. by its Corporate General Counsel
Mr. Sanjay Khanna

… Appellant

And

The Presiding Officer,
Labour Court-I,
Hyderabad & another

… Respondents

W.A.No. 713 of 2007

Between:

VST Industries Limited,
Rep. by its Corporate General Counsel
Mr. Sanjay Khanna

… Appellant

And

The Presiding Officer,
Labour Court-I,
Hyderabad & another

… Respondents

W.A.No. 714 of 2007

Between:

VST Industries Limited,
Rep. by its Corporate General Counsel
Mr. Sanjay Khanna

... Appellant

And

The Presiding Officer,
Labour Court-I,
Hyderabad & another

... Respondents

W.A.No. 715 of 2007

Between:

VST Industries Limited,
Rep. by its Corporate General Counsel
Mr. Sanjay Khanna

... Appellant

And

The Presiding Officer,
Labour Court-I,
Hyderabad & another

... Respondents

W.A.No. 716 of 2007

Between:

VST Industries Limited,
Rep. by its Corporate General Counsel
Mr. Sanjay Khanna

... Appellant

And

The Presiding Officer,
Labour Court-I,
Hyderabad & another

... Respondents

W.A.No. 717 of 2007

Between:

VST Industries Limited,
Rep. by its Corporate General Counsel
Mr. Sanjay Khanna

… Appellant

And

The Presiding Officer,
Labour Court-I,
Hyderabad & another

… Respondents

W.A.No. 718 of 2007

Between:

VST Industries Limited,
Rep. by its Corporate General Counsel
Mr. Sanjay Khanna

… Appellant

And

The Presiding Officer,
Labour Court-I,
Hyderabad & another

… Respondents

W.A.No. 719 of 2007

Between:

VST Industries Limited,
Rep. by its Corporate General Counsel
Mr. Sanjay Khanna

… Appellant

And

The Presiding Officer,
Labour Court-I,
Hyderabad & another

… Respondents

:: COMMON JUDGMENT ::

Counsel for the appellants : Shri C.R. Sridharan
(in all the cases)

Counsel for respondent No.2 : Shri S. Ashok Anand Kumar
(in all the cases)

10th September, 2007

Per G.S. SINGHVI, CJ

These appeals are directed against common order dated 21.08.2007 passed by the learned Single Judge in Writ Petition Nos. 8512 to 8523 of 2007, whereby he declared that the petitions filed by the workmen (respondent No.2 in each of these appeals) under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short, 'the Act'), as amended by Andhra Pradesh Act No. 32 of 1987 are not maintainable, but directed the Labour Court to treat those petitions as reference under Section 10 (1) of the Act and decide the same on merits within six months from the date of receipt of copy of the High Court's order.

The workmen filed petitions under Section 2-A (2) of the Act for grant of a declaration that the action of the management not to allow them to continue in service amounted to retrenchment within the meaning of Section 2 (oo) and they are entitled to reinstatement because they were not given one month's notice or pay in lieu thereof and retrenchment compensation.

On receipt of notices issued by the Labour Court, the appellant straightaway filed writ petitions questioning the very maintainability of the petitions filed under Section 2-A (2). According to the appellant, the workmen are contract labour and the petitions filed by them for reinstatement were not maintainable because they do not fall within the definition of 'workman' under Section 2 (s) of the Act.

On the pleadings of the parties, the learned Single Judge framed

the following questions:

1. Whether there was an employer and employee relationship between the petitioner and the 2nd respondent ?
2. Whether the 2nd respondent are contract labour or there is any camouflage or corporate veil, which can be considered and decided by the Labour Court ? and
3. Whether the Labour Court has jurisdiction to entertain a petition under Section 2-A(2) of the Act, in the facts and circumstances of the case ?

The learned Single Judge then referred to the judgments of the Supreme Court in **Workmen of F.C.I. v. F.C.I. of India**[1], **Steel Authority of India Ltd. v. National Union Waterfront Workers**[2], **Oil and Natural Gas Corporation Limited v. N. Satyanarayana**[3], **Bharat Heavy Electricals Ltd. v. Anil and others**[4], **Management of Badjampura Salt Factory v. Its Workmen**[5], **Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamilnadu and others**[6], **APSRTC v. G. Srinvas Reddy**[7] and held that the petitions filed by the workmen under Section 2-A (2) are not maintainable. This is evinced from the following extract of the order under challenge:

> "May be, the discreet camouflage or corporate veil needs to be lifted and find out as to whether the 2nd respondent are the employees of the principal employer. But, this aspect can be gone into only in an appropriate reference made to the Labour Court by the appropriate Government and not in a case of this nature. In this regard, the law is well settled. Further, it is a fact that earlier, the Board under the CLRA Act had already recommended for abolition of contract system in the loading and unloading operations of Shipping Department of the petitioner-company, which, of course, has not fructified since the Government has not issued any notification as required under the law, which is the subject of another Writ Petition in W.P.No.6096 of 2001. This all would indicate that *prima facie,* the 2nd

respondent are contract labour, may be one of them is named as a contractor, but still this cannot be gone into in a petition filed under Section 2-A(2) of the Act. Further, there is no categorical assertion that the services of the 2nd respondent were terminated, which is contrary to the provisions of Section 25-F of the Act. Even this aspect also cannot be gone into in view of the fact that *prima facie* it appears, the 2nd respondent are only contract labour. Therefore, I am of the opinion that the 2nd respondent cannot maintain a claim petition under Section 2-A(2) of the Act before the Labour Court."

The learned Single Judge then proceeded to direct that the petitions filed under Section 2-A (2) of the Act should be treated as a reference under Section 10 (1) and decided on merits. The penultimate paragraph of the order of the learned Single Judge, which contains the reasons recorded by him for adopting this course, is reproduced below:

"But, as noticed above, the 2nd respondent have been toiling around the authorities, firstly, seeking to abolish the contract labour system in the V.S.T. Industries, particularly, loading and unloading operations in the Shipping Department. Secondly, though the State Contract Labour Advisory Board had recommended for abolition of loading and unloading operations in the Shipping Department of the company, the Government has not taken any decision and the writ petition filed, in this regard, is pending before this Court. Further, the petitions under Section 2-A(2) are filed stating that the services of the 2nd respondent are terminated. In fact, the practice of the employers to stifle the efforts of the workmen in their legitimate claim seeking benefit under the industrial law by tiring them out in adjudication proceedings raising technical and hyper-technical pleas and thus dragging on litigation for years on such pleas requires to be depreciated. The primary duty of the Industrial Tribunal is to establish peace in the industry between the employer and the workmen. The plea of the petitioner-employer is that a petition, in the present shape, i.e. under Section 2-A(2) of the Act is not maintainable. Thus, it is clear that a petition under a different form, when a reference is made under Section 10 of the Act, is maintainable. In these cases, as many as 14 workmen are involved. Their nature of plea and relief sought is one and the same. If the 2nd respondent are directed to

seek reference under Section 10 of the Act, it may further delay the cause. In view of this prolonged litigation and the 2nd respondent were not successful all these years in getting their cause adjudicated, to avoid any further delay and to meet the ends of justice, I deem it appropriate to direct the Labour Court to consider the petitions filed under Section 2-A(2) of the Act as a reference under Section 10(1) of the Act and proceed with the matter and decide the same, on merits, within a period of six (6) months from the date of receipt of a copy of this Order."

We have heard learned counsel for the parties and scrutinized the records. Section 10, which falls in Chapter III of the Act, empowers the appropriate Government to refer any industrial dispute to a Board, to a Court for enquiry, to a Labour Court or to Industrial Tribunal. Section 10-A contemplates voluntary reference of disputes to arbitration. For the sake of convenient reference, Section 2(a) and 10 (1) (1-A) and (2) of the Act, which have bearing on the decision of these appeals, are reproduced below:

" **Section 2(a)**

"appropriate Government" means,-

(i) in relation to any Industrial Disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company (or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an Industrial Dispute concerning (a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948),or (the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956), or the Employees' State Insurance Corporation established under Section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948),or the Central Board of Trustees and the State Board of Trustees constituted under Section 5-A and Section 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established

under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956) or (the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956) or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 (58 of 1962) or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under Section 3, or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporations Act, 1964 (37 of 1964), or (the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantees Corporation Limited or the Industrial Reconstruction Bank of India Limited;) or (the Banking Service Commission established under Section 3 of the Banking Service Commission Act, 1975, or) (an air transport service, or a banking or an insurance company, a mine, an oil-field), (a Cantonment Board), or a major port, the Central Government, and

(ii) in relation to any other Industrial Dispute, the State Government:

Section 10:

(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time) by order in writing,-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for Inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing

to be connected with or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matters specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act, in respect of the dispute may have commenced:

Provided also that where the dispute in relating to which the Central Government, is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

Section 10(1-A)

Where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute, and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Tribunal for adjudication.

Section 10(2)

Where the parties to an industrial dispute apply in the prescribed manner, whether jointly, or separately, for a reference of the dispute to a Board, Court (Labour Court, Tribunal or National Tribunal), the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall

make the reference accordingly."

A conjoint reading of the above re-produced provisions makes it clear that the power to refer an industrial dispute exclusively vests with the appropriate Government, as defined in Section 2(a) of the Act. The scheme of the Act does not envisage any role of the Courts in the matter of making reference of the industrial disputes to an adjudicating body constituted under the Act. Of course, in exercise of its power under Article 226 of the Constitution of India, the High Court can quash the decision of the appropriate Government and direct re-consideration of the workman's plea for reference of the industrial dispute. In an exceptional case, the High Court can also issue mandamus for reference of the industrial disputes. However, the High Court cannot directly issue order for treating any particular petition filed by the workman as reference under Section 10 (1) of the Act. Therefore, the direction given by the learned Single Judge that the petitions filed by the workmen shall be treated as reference under Section 10(1) and decided by the Labour Court cannot be sustained.

In the result, the appeals are allowed. The order of the learned Single Judge is set aside. However, it is made clear that this judgment shall not adversely affect adjudication of Writ Petition No. 10254 of 2005 filed by the workmen.

As a sequel to disposal of the writ appeals, WAMP.Nos. 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440 and 1441 of 2007 filed by the appellant for interim relief are disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

September 10, 2007

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[1] 1985 (2) LLJ 4

[2] (2001) 7 SCC 1

[3] 2003 (3) ALD 711

[4] (2007) 1 SCC 610

[5] AIR 1960 AP 378

[6] (2004) 3 SCC 514

[7] (2006) 3 SCJ 132